

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

DAYRON T. JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 09-00830-CV-W-ODS
	)	Crim. No. 05-00029-03-CR-W-ODS
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

**ORDER (1) DENYING DEFENDANT'S MOTION FOR DISCOVERY AND (2)  
DIRECTING DEFENDANT'S ATTORNEY TO PROVIDE DOCUMENTS**

Following a jury trial, Movant was convicted on various drug and gun related counts. The convictions and sentence were affirmed on direct appeal. Now pending is Movant's request for postconviction relief, in which he claims his attorney was ineffective for failing to explain the ramifications of a plea offer. The Government has responded by averring that no plea offer was ever made, so there was nothing that could be incorrectly explained. To support its position, the Government has supplied affidavits from the Assistant United States Attorney(s) involved in the prosecution and Movant's second attorney, Ms. Susan Dill. In her affidavit, Ms. Dill indicates she reviewed notes provided by Movant's original attorney (Mr. Robin Fowler). Movant wants to see the notes Ms. Dill indicates she reviewed.

As a purely technical matter, the Government does not have the documents Movant seeks, so the Government cannot produce them. For this reason, Movant's request for discovery from the Government (Doc. # 13) is denied. However, Movant's legal file belongs to him. While there may be some items in the file he cannot have, communications and notes by his attorneys are not prohibited. The Court discerns no reason to deny Movant access to his own attorney's notes.

The Government contends the notes might contain privileged information. This may be, which is why the Court does not instruct the Government to obtain the notes for Movant. Movant is entitled to the notes, and if he deems it useful he may waive the privilege and use them to support his claims as he sees fit.

Accordingly, Ms. Dill is directed to deliver the following items to Defendant:

1. Copies of all communications from Movant to either Ms. Dill or Mr. Fowler.
2. Copies of all communications from Ms. Dill or Mr. Fowler to Movant.
3. Copies of all memoranda prepared by Mr. Fowler or Ms. Dill, including but not limited to Sentencing Guideline calculations.
4. Copies of any other materials in the file Ms. Dill reviewed in preparing her affidavit.

The Clerk of Court shall mail a copy of this Order to:

Ms. Susan Dill  
818 Grand Blvd.  
Suite 550  
Kansas City, MO 64106

**It is so ORDERED.**

/s/ Ortrie D. Smith

ORTRIE D. SMITH  
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri,  
Dated: March 4, 2010.